



KLEIN LIEBMAN & GRESEN, LLC

BUSINESS VALUATION · FORENSIC ACCOUNTING · LITIGATION SUPPORT · CONSULTING

NOVEMBER NEWSLETTER

UPCOMING EVENTS

David Gresen will be a panelist on an ABA webinar on Thursday November 16th at 12:00 p.m. The program is titled "Mining for Financial Information in a Divorce Using Personal Tax Returns" [Click Here to Register](#)

CORPORATE CASE OF INTEREST

KASSAB v. KASSAB (Supreme Court, Queens County - Commercial Division)

The petitioner and the respondent are brothers who jointly owned two entities, Corner 160 Associates, Inc. (Corner) and Mall 92-30 Associates, LLC (Mall). Petitioner owned 25% of both entities and respondent owned 75% of both entities. Both Corner and Mall are real-estate holding entities. Together, both entities own three unimproved parcels of land in Jamaica, Queens. The brothers operated a parking lot and a flea market on the three lots.

On March 4, 2013, respondent told petitioner to get out of the office after discovering petitioner was diverting money from the gross receipts of the businesses. By way of a three day surveillance conducted at the parking lot, it was determined that the ledgers maintained by respondent also under-reported the number of vehicles utilizing the parking lot and consequently the amount of income the parking lot produced. Since the parties' payments to themselves were unauthorized, as a matter of law, they are mutually liable for breach of fiduciary duty. As there is fault on both parties, the Court found that dissolution is a viable option to prevent further conduct of this kind. However, the Court also permitted respondent to purchase petitioner's 25% interest in Corner and Mall at their respective fair values, as determined by a business valuation expert.

In determining the fair value of Corner and Mall, the valuation expert did not apply any marketability discount as time on the market was already considered in determining the value of the main underlying asset (property) owned by Corner and Mall.

[LINK TO DECISION](#)

MATRIMONIAL CASES OF INTEREST

NADASI v. NADEL-NADASI (App Div., 2nd Dep't)

The plaintiff-husband was a 50% partner in a commodities brokerage firm, earning approximately \$1.5 million per year. The defendant-wife stopped working in 1996 to be a homemaker and primary caretaker of the parties' children. The Supreme Court awarded the wife \$135,450 of equitable distribution for the husband's interest in the firm, which represented 15% of the value of the husband's 50% interest. Further, the wife did not receive any equitable distribution for the husband's interest in a business apartment as the apartment was deemed to be separate property.

The Appellate Court ruled that based on the defendant's indirect contributions to the business as a homemaker and primary caretaker for the parties' three children in the long-term marriage, and also considering that the wife relinquished her own career, an award of 25% of the husband's interest in the firm is appropriate.

With regard to the business apartment, the Appellate Court agreed with the Supreme Court's ruling that the husband's initial 20% interest acquired a few months after the parties' marriage was separate property. However, in July 1997 the apartment was refinanced and the husband purchased an additional 13.33% interest in the apartment. The Appellate Court determined the 13.33% interest was marital property and awarded the wife \$90,000 which represented 50% equitable distribution.

[LINK TO DECISION](#)

ANDERSON v. ANDERSON (App Div., 4th Dep't)

Incorporated in the judgment of divorce, the parties had an oral stipulation of settlement which included a provision that entitled the plaintiff-husband to an interest in the defendant-wife's master degree but did not stipulate to the valuation of the degree. Nine years after the entry of the judgment of divorce, husband moved to recover his interest in the wife's master degree which she earned during the course of the marriage.

Husband had an accountant value the wife's enhanced earnings capacity due to her master's degree. Wife contested the valuation of her master's degree and the extent of the husband's marital interest. The Supreme Court denied the husband's motions on grounds that there was "no enforceable stipulation" with respect to the degree.

The Appellate Court determined the Supreme Court erred in their denial of husband's motion. The Supreme Court could not determine if the stipulation was enforceable without the wife commencing a plenary action challenging the stipulations enforceability. As the wife only contested the valuation and the extent of the husband's marital interest, the Appellate Court reversed the Supreme Court's

denial of the husband's motion and remitted the matter to the Supreme Court for a hearing to determine the value of the husband's interest in the wife's master degree.

[LINK TO DECISION](#)

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